

Kieherman



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Apex International Management Services, Inc.

File: B-231715

Date: August 19, 1988

DIGEST

1. Protest that solicitation estimate for reimbursable materials is inaccurate and insufficiently detailed is denied where the estimate is based on historical data and the record does not establish that the estimate is unreasonable or not based on the best information available to the agency.
2. Protest that solicitation reimbursement provision is ambiguous because it does not sufficiently limit the bidders' potential obligation to supply material without additional government reimbursement is denied where the solicitation reasonably describes the work to be performed, since the mere presence of some risk does not render a solicitation improper. Bidders are expected to consider the degree of risk in calculating their bids.

DECISION

Apex International Management Services, Inc. protests any award under invitation for bids (IFB) No. F38601-88-B0033, issued by the Department of the Air Force for the maintenance of military family housing units at Shaw Air Force Base. Apex, the incumbent, contends that the IFB is vague and ambiguous with respect to the amount of additional reimbursement to which the contractor will be entitled for providing certain materials under a reimbursement clause. We find the protest without merit.

The IFB calls for the contractor to provide all the necessary materials and parts to perform the required maintenance, except for certain specified government furnished appliances. The contractor receives reimbursement for maintenance materials only as provided under the IFB's item reimbursement provision, to which Apex objects, which states in relevant part as follows:

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"4.3 GOVERNMENT REIMBURSEMENT FOR ITEMS

4.3.1 The contractor shall bear the cost of all materials, parts, and supplies up to \$75 per item per job order except on existing work backlog. . . . The government shall reimburse the contractor for materials, parts and supplies in excess of \$75 per item per job order. The contractor is responsible for the first \$75 of each item costing over \$75. For example, if an item cost is \$100, the government will reimburse \$25 to the contractor. . . . See definition of 'item' in paragraph C-2.2.15."

Paragraph C-2.2.15 defines item as: "One each of any material, part, component, subassembly, assembly, equipment, equipment accessory or attachment for the equipping, maintenance, operation, or support of military family housing facilities, appliances, and equipment." The IFB further provides that the total estimated cost of all reimbursable materials, parts and supplies which will be required under the contract is \$91,540.50, which amount is entered under contract line item No. 0001AB on the bid.

Apex complains that the reimbursement provision presents the bidder with a dilemma in attempting to estimate the amount of materials which it should cost out and include in its bid. Apex contends that this problem is particularly acute because the IFB does not explain how the estimate was calculated. Apex's objection pertains both to the fact that it believes that the reimbursement clause fails to sufficiently limit potential contractor "liability" for materials for which it will not receive reimbursement, and that insufficient information has been made available for the contractor to estimate its potential unreimbursed materials liability.

In DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43, our Office specifically considered a similar protest against a maintenance contract with substantially the same reimbursement clause; we concluded that the clause was sufficient to permit bidders to compete intelligently and on a relatively equal basis. With respect to the alleged lack of specificity of the data on which the \$91,540.50 estimate is based, there is no requirement that a solicitation be so detailed as to eliminate all performance uncertainties. Aleman Food Service, Inc., B-219415, Aug. 29, 1985, 85-2 CPD ¶ 249. Moreover, where estimates are provided in a solicitation, there is no requirement that they be absolutely correct. Rather, they must be based on the best information available and present a reasonably accurate representation of the

agency's actual needs. Id. It is the protester's burden to establish that the stated estimates are not based on the best information available, or are otherwise deficient. Richard M. Walsh Associates, Inc., B-216730, May 31, 1985, 85-1 CPD ¶ 621.

Here, the Air Force based the estimate on historical data, adjusted to reflect the contractor's increased nonreimbursable obligation from \$50 per item under the predecessor solicitation to \$75 under the present solicitation. Apex's claim that the estimate is inaccurate is based primarily on the fact that it received only approximately \$29,000 in reimbursement under the predecessor contract. However, Apex misconstrues the Air Force's purpose in providing the \$91,540.50 estimate. The estimate refers to the total cost of the items to which reimbursement applies, and is required to be entered as an addition to the bid total. Thus, the \$91,540.50 total includes the first \$75 for each item, for which the IFB explicitly provides the bidder will not be entitled to reimbursement, regardless of the item's total cost. Therefore, the government's total estimate must be adjusted downward to factor out the \$75 (previously \$50) deductible for each reimbursable item in order to arrive at a figure comparable to the \$29,00 in actual reimbursement which Apex received under the prior contract, and which Apex argues should be equal to the estimate. See DSP, Inc., B-220062, supra.

Apex has performed the contract over the past 3 years, and has received reimbursement through the application of this deductible formula. Thus, Apex is directly familiar with the Air Force's intended calculation and cannot realistically be considered to have been misled by the solicitation. Further, the Air Force's use of the \$91,540.50 estimate probably provides the most useful figure which can be derived from the available historical data. Since the amount of the deductible is being changed from \$50 to \$75, if this solicitation provided the amount actually reimbursed previously under the lower deductible, as Apex seems to request, that estimate is likely to mislead the bidders since it will change substantially under the new contract terms. Instead, being provided with the probable total cost of the reimbursable items based on available historical data, together with a detailed description of the facilities and the opportunity for a site visit, permits prospective bidders a reasonable opportunity to assess the probable reimbursable component. The bidders can use this assessment in conjunction with the total reimbursable item cost estimate in order to calculate the likely nonreimbursable component of item costs. Accordingly, we do not find

that Apex's argument in this regard satisfies its burden of establishing that this estimate is not based on the best available figures, or is unreasonable. Id.

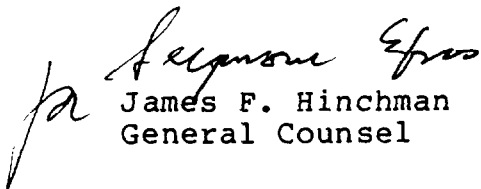
Apex also objects that the clause fails to reasonably limit potential contractor liability for the cost of materials. However, there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate any risk or remove any uncertainty from the mind of every prospective bidder. Analytics, Inc., B-215092, Dec. 31, 1985, 85-1 CPD ¶ 3. Here, as the contract administrator has explained, the purpose of the clause in question is to relieve the government of the responsibility for supplying material which might impede contractor performance. Instead, the contractor is required to maintain bench stocks and special level items, for which it will be permitted reimbursement only for those amounts by which single required maintenance items exceed \$75 in cost.

Custodial contracts by their nature often require computing prices principally based on visual inspection. Therefore, we have held that the specifications, in conjunction with layout diagrams and the opportunity for on-site visits, generally afford prospective offerors an adequate basis on which to compete intelligently. A&C Building and Industrial Maintenance Corp., B-230270, May 12, 1988, 88-1 CPD ¶ 451. Here, the solicitation provides detailed information regarding the base facilities and the services required, and Apex has raised no objection to these descriptive specifications. Rather, Apex is contending that exact specificity is needed with respect to a solicitation provision which, by its nature, can only be estimated. Apex, as the contractor which performed the maintenance for the past 3 years, is in the best position of any bidder to make the required estimates and predictions of what particular replacement materials are likely to be required. However, while bid opening was postponed because of this protest, the agency points out that six contractors (not including Apex) attended a June 7 pre-bid conference and site visit, and none objected to or raised any questions about the clause in question.

In our view, the thrust of Apex's protest is an objection to any risk or uncertainty under the solicitation with respect to the total cost of material which the contractor will be obligated to supply under the contract. However, the business reality is that computing prices based on inspections and estimates involves an element of risk, which the agency is not required to eliminate, and which bidders are expected to allow for in computing their bids. Id.

We note that the Air Force has argued that the reimbursement clause permits reimbursement after the contractor has expended \$75 in materials cost under any one job order. This interpretation is obviously contrary to the IFB language which makes the \$75 apply specifically "per item," which application is consistent with the purpose and application of the clause as explained above by the contract administrator. If, in fact, the Air Force intends to provide reimbursement after \$75 of the contractor's material expenditure per job order, without respect to item cost, then the IFB should not contain the "per item" limitation on reimbursement.

The protest is denied.

 James F. Hinchman
General Counsel